

1 WILSON TURNER KOSMO LLP
 2 ROBIN A. WOFFORD (137919)
 3 MARY P. SNYDER (211228)
 4 KARYN R. MOORE (309787)
 5 402 West Broadway, Suite 1600
 6 San Diego, California 92101
 Telephone: (619) 236-9600
 Facsimile: (619) 236-9669
 E-mail: rwofford@wilsonturnerkosmo.com
 E-mail: msnyder@wilsonturnerkosmo.com
 E-mail: kmoore@wilsonturnerkosmo.com

7 Attorneys for Specially Appearing Defendants
 8 UNIVERSITY OF WISCONSIN-MADISON (erroneously sued),
 9 BOARD OF REGENTS OF THE UNIVERSITY OF WISCONSIN
 10 SYSTEM, ROBERT GOLDEN, ELLEN WALD, RYAN
 11 MCADAMS AND NINA MENDA (IN HER CAPACITY AS A
 UNIVERSITY OF WISCONSIN-MADISON EMPLOYEE)

12 [ADDITIONAL COUNSEL LISTED ON FOLLOWING PAGE]

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 OLACHI MEZU-NDUBUISI, an
 16 Individual,

17 Plaintiff,

18 v.

19 UNIVERSITY OF WISCONSIN-
 20 MADISON; BOARD OF REGENTS OF
 21 THE UNIVERSITY OF WISCONSIN
 22 SYSTEM; ROBERT GOLDEN, an
 23 Individual; ELLEN WALD, an
 24 Individual; RYAN MCADAMS, an
 25 Individual; UNITYPOINT HEALTH-
 26 MERITER HOSPITAL, AKA MERITER
 27 HOSPITAL, INC., a Corporation; PAM
 28 WETZEL, an Individual; SUE
 ERICKSON, an Individual; NINA
 MENDA, an Individual; MERITER
 EXECUTIVE BOARD COMMITTEE;
 AMANDA LINDSAY, an Individual;
 KARL NIBBELINK, an Individual;
 ELIABETH PRITTS, an Individual;
 SHERRY HENSELER, an Individual;
 DOES 1-10, Inclusive,

Defendants.

Case No. 2:23-CV-08516-RGK(Ex)

**JOINT RULE 26(f)
 SCHEDULING CONFERENCE
 REPORT**

Complaint Filed: October 9, 2023

Scheduling Conference

Date: January 8, 2024
 Time: 9:00 A.M.
 Courtroom: 850

Judge: Hon. R. Gary Klausner
 Courtroom.: 850

Magistrate Judge: Hon. Charles F. Eick
 Courtroom: 750

Trial Date: Not Set

1 Chinyere Valerie Ibe, Esq. (SBN 247242)
2 Law Offices of C. Valerie Ibe,
3 7220 Owensmouth Avenue, Ste 220
4 Canoga Park, CA 91303
5 Tel:818-900-5298
6 E-mail: valerie@cvalerieibe-law.com

7 Attorney for Plaintiff
8 OLACHI MEZU-NDUBUISI, M.D.

9 AXLEY BRYNELSON LLP
10 BRIAN C. HOUGH (Admitted Pro Hac Vice)
11 2 East Mifflin Street, Suite 200
12 Madison, WI 53703
13 Telephone: (608) 257-5661
14 Facsimile: (608) 257-5444
15 E-mail: bhough@axley.com

16 Attorneys for Defendants
17 UNITYPOINT HEALTH-MERITER HOSPITAL
18 AKA MERITER HOSPITAL, INC.
19 PAM WETZEL
20 SUE ERICKSON
21 MERITER EXECUTIVE BOARD COMMITTEE
22 AMANDA LINDSAY
23 KARL NIBBELINK
24 ELIZABETH PRITTS
25 SHERRY HENSELER
26 NINA MENDA
27
28

1 In advance of their January 8, 2024 Scheduling Conference, counsel for
 2 Plaintiff OLACHI MEZU-NDUBUISI (“Plaintiff”), counsel for Specially Appearing
 3 Defendants UNIVERSITY OF WISCONSIN-MADISON (UW-
 4 Madison”)(erroneously sued), BOARD OF REGENTS OF THE UNIVERSITY OF
 5 WISCONSIN SYSTEM, ROBERT GOLDEN, ELLEN WALD, RYAN MCADAMS
 6 AND NINA MENDA (in her capacity as a UW-Madison employee) (collectively,
 7 “State of WI Defendants”), and counsel for Specially Appearing Defendants
 8 UNITYPOINT HEALTH-MERITER HOSPITAL, AKA MERITER HOSPITAL,
 9 INC., PAM WETZEL, SUE ERICKSON, NINA MENDA (in her capacity as Director
 10 at UnityPoint Meriter), MERITER EXECUTIVE BOARD COMMITTEE; AMANDA
 11 LINDSAY, KARL NIBBELINK, ELIABETH PRITTS, and SHERRY HENSELER
 12 (collectively, “Meriter Defendants”) (State of WI Defendants and Meriter Defendants
 13 jointly referred to as “Defendants”) held their Conference of Parties pursuant to
 14 Federal Rule of Civil Procedure 26(f) on December 12, 2023.¹

15 Plaintiff and Defendants² (collectively, the “Parties”) respectfully submit the
 16 following Joint Scheduling Conference Report, pursuant to the Federal Rules of Civil
 17 Procedure 16(b) and 26(f)(3), U.S. District Court, Central District of California Local
 18 Rule 26-1, and the Court’s Policies and Procedures including this Court’s Order
 19 Setting Scheduling Conference filed November 20, 2023 (Docket 45), as set forth
 20 below:

21 ///

22 ///

24 ¹ Prior to, and during, this conference, Defendants told Plaintiff they were
 25 participating in the conference as required by the federal rules and the court, and noted
 26 their participation should in no way be taken as a waiver of their objections to
 27 personal jurisdiction and venue, as raised in their respective pending Motions to
 Dismiss.

28 ² Defendants submit this report subject to, and without waiving, their objections to
 personal jurisdiction and venue, as raised in their respective Motions to Dismiss.

1 **I. SUBJECT MATTER JURISDICTION**

2 **Plaintiff's Position**

3 Plaintiff asserts that this Court has jurisdiction over plaintiff's claims pursuant
4 to 28 U.S.C. ¶1331 (federal question jurisdiction). University of Wisconsin-Madison
5 defendants and the Board of Regents engage in substantial, continuous, and systematic
6 activities in California. The contacts are imputed to the Meriter defendants by reason
7 of their partnership.

8 Plaintiff properly served the UW defendants on October 23, 2023 and the
9 Meriter defendants on October 19, 2023. All the defendants accepted service without
10 waiving other jurisdictional defenses, and there are no outstanding claims disputing
11 adequacy of service.

12 **Defendants' Position**

13 Defendants reassert their objections to personal jurisdiction and venue, as raised
14 in their respective Motions to Dismiss. Subject to, and without waiving these
15 objections, Defendants provide the following response:

16 The parties agree that subject matter jurisdiction is undisputed.

17 **II. STATEMENT OF THE CASE**

18 **Plaintiff's Factual Summary of the Case and Claims Asserted**

19 **Factual Summary of the case – Plaintiff's statement:**

20 Plaintiff is a black African woman whose national origin is from Nigeria, a
21 member of the Igbo ethnic group in that nation. Dr. Olachi Mezu-Ndubuisi is
22 suing the defendants, her joint employers and their agents/employees for
23 discrimination based on race, national origin, disability, for retaliation,
24 harassment, abusive and hostile work environment, FMLA Interference, FMLA
25 Retaliation, and disparate treatment. Dr. Olachi Mezu-Ndubuisi was hired in
26 2013 as an Assistant Professor and physician-scientist in the Division of
27 Neonatology, Department of Pediatrics at University of Wisconsin (UW)
28 School of Medicine and Public Health with an affiliate appointment in the

1 Department of Ophthalmology and Visual Sciences. She has a Doctor of
2 Optometry degree, summa cum laude, prior to obtaining a medical degree, and
3 completing three years of Pediatric residency, and more than three years of
4 neonatology fellowship training.

5 Upon hire in 2013, Dr. Mezu-Ndubuisi was unfairly subjected to monitoring
6 and restrictions on her clinical work at Meriter Hospital, despite exceeding
7 expectations in her evaluations. The defendants acted jointly and severally.
8 The complaint provides in detail a pattern of unfair treatment, discrimination,
9 and retaliation against the Plaintiff, Dr. Mezu-Ndubuisi who was the only
10 underrepresented minority neonatologist in the division for several years and
11 faced discrimination in the false and biased patient safety reporting, unjustly
12 targeted, Discriminated against for Advocating for Safe Care of a Minority
13 Child who died, retaliation for Reporting Racial Discrimination in Patient
14 Safety Reporting and subjected to harassment and an abusive and hostile work
15 environment. Other similarly situated colleagues who were not Black African
16 Americans of Nigerian national origin were not subjected to such treatment.

17
18 The defendants systematically took down the Plaintiff's dignity, good name,
19 reputation, and job because she opposed and complained about the unfair
20 treatment, discrimination, retaliation, harassment, hostile work environment,
21 and disparate treatment that they subjected her to. The discrimination and
22 retaliation increased when she sought to have them addressed and remedied.

23 The defendants interfered with her FMLA and retaliated against her by refusing
24 to let her return to work after she had been cleared by her doctors.

25 The defendants ordered her to undergo invasive and onerous testing in order to
26 keep her position after she returned from her FMLA. Other similarly situated
27 employees who were not Black African Americans of Nigerian origin were not
28 subjected to such testing after they returned from FMLA.

1 Defendants, then constructive discharged her after she sailed through their
2 onerous and invasive testing.

3 Plaintiff suffered significant damages, including extreme emotional distress,
4 pain and suffering past and future lost wages and benefits, and attorney fees,
5 costs of suit as a result of the defendants' discriminatory and punitive actions.

6
7 Claims being asserted by the plaintiff:

- 8 1. Racial Discrimination in Violation of Title VII of the Civil Rights Act of
- 9 1964, 42 USC 2000e. et seq.
- 10 2. Title VII Retaliation
- 11 3. FMLA Interference
- 12 4. FMLA Retaliation
- 13 5. Harassment/Hostile and Abusive Work Environment
- 14 6. Constructive discharge
- 15 7. Disability discrimination - Title I of the Americans with Disabilities Act of
- 16 1990 as amended.
- 17 8. Joint employment relationship between Meriter and UW

18 **State of WI Defendants' Short Factual Summary of Claims and Defenses**

19 State of WI Defendants reassert their objections to personal jurisdiction and
20 venue, as raised in their Motion to Dismiss. Subject to, and without waiving these
21 objections, State of WI Defendants provide the following response:

22 Plaintiff began working for UW-Madison in 2013, as a tenure-track Assistant
23 Professor in the Department of Pediatrics within the University's School of Medicine
24 and Public Health ("SMPH"), until she voluntarily resigned. Plaintiff's University
25 appointment was allocated 75% to research and teaching duties and 25% to clinical
26 care for patients in the Neonatal Intensive Care Units ("NICU") at UW Health
27 American Family Children's Hospital ("AFCH") and Meriter. UW-Health and
28 Meriter are separate legal entities from UW-Madison. To provide clinical care at

1 AFCH and Meriter, Plaintiff was required to become a member of the medical staff at
2 those entities and abide by the medical staff bylaws of those entities. UW-Madison
3 does not control the medical staff processes at AFCH or Meriter.

4 State of WI Defendants dispute each and every one of Plaintiff's claims.
5 Moreover, Plaintiff's Title VII claims fall outside the applicable statute of limitations.
6 Further, State of WI Defendants assert the affirmative defenses of sovereign immunity
7 and statute of limitations as to Plaintiff's FMLA claims. *See* 29 C.F.R. 825.400; U.S.
8 Const. amend. XI. If the Court does not dismiss this case as to State of WI
9 Defendants, State of WI Defendants respectfully reserve the right to submit a
10 supplemental factual summary of claims and defenses at that time.

11 **Meriter Defendants' Short Factual Summary of Claims and Defenses**

12 Meriter Defendants reassert their objections to personal jurisdiction and venue,
13 as raised in their Motion to Dismiss. Subject to, and without waiving these objections,
14 Meriter Defendants provide the following response:

15 Meriter conducts no business or employment-related activities in the state of
16 California. No acts or omissions are alleged to have taken place in the state of
17 California. None of the defendants reside in California. This case has nothing to do
18 with California.

19 Plaintiff, who was providing health care services at Meriter, alleges various
20 forms of employment discrimination. The Meriter Defendants expressly deny any and
21 all claims. Any acts or omissions involving Plaintiff were for legitimate, non-
22 discriminatory reasons. Plaintiff's claims may be barred by applicable statutes of
23 limitations. Plaintiff cannot establish an employment relationship with the Meriter
24 Defendants. Plaintiff fails to state a claim against the individual defendants and
25 against the Meriter Executive Board. Further facts and defenses may be established
26 through discovery.

27 ///

28 ///

1 **III. PRINCIPAL ISSUES**

2 **Plaintiff's Position**

3 Defendants have filed a series of motions to dismiss which the plaintiff is
4 opposing, based on several disputed facts and points of law, including but not limited
5 to the following:

- 6 a. Whether this court has personal jurisdiction over the defendants.
7 b. Whether the Central District of California is an improper venue.
8 c. Whether a counsel that is not licensed in California nor admitted or permitted to
9 practice in the Central District of California can meet and confer as a counsel
10 pursuant to Local Rule 7.3.
11 d. Whether the failure to follow the local rules should nullify a motion to dismiss.
12 e. Whether UW and the Board of Regents have systematic, continuous activities
13 in California.
14 f. Whether the contacts of UW can be imputed to Meriter based on the agency
15 relationship.

16 Plaintiff hopes to conduct discovery if the request to conduct a jurisdictional
17 discovery is granted. Additional issues identified in the pleadings include, but are not
18 limited to:

- 19 a. Whether Meriter can be held responsible under the principles of agency, alter
20 ego.
21 b. The degree of UW's involvement and control over the actions of Meriter
22 defendants at the time the discriminatory actions took place.
23 c. Whether the defendants solicit or directly act as agents in soliciting or recruiting
24 California residents.

25 Additional disputed questions of facts and law beyond those set out above are to
26 be identified from the jurisdictional discovery, and from the defendants' answers to
27 the complaint. Plaintiff reserves the right to amend and supplement.

28 ///

1 **State of WI Defendants' Position**

2 State of WI Defendants reassert their objections to personal jurisdiction and
3 venue, as raised in their Motion to Dismiss. Subject to, and without waiving these
4 objections, State of WI Defendants provide the following response:

5 The principal issues to be determined in this matter include:

- 6 1. Whether personal jurisdiction is appropriate over State of WI Defendants.
- 7 2. Whether venue is proper.
- 8 3. Whether UW-Madison should be stricken as a party as an improperly
9 sued entity.
- 10 4. Whether Plaintiff's Title VII claims are timely as to State of WI
11 Defendants.
- 12 5. Whether Plaintiff can sue State of Wisconsin employees in their personal
13 capacities for alleged violations of Title VII, Title I of the ADA, and the
14 Rehabilitation Act.
- 15 6. Whether Plaintiff suffered any alleged discrimination or harassment,
16 including whether, for alleged discrimination, Defendant had legitimate
17 non-discriminatory reasons for actions taken/not taken in regard to
18 Plaintiff and for alleged harassment, whether the alleged conduct rose to
19 the level of unlawful harassment under Title VII.
- 20 7. Whether Plaintiff's claims against the Board of Regents under Title I of
21 the ADA and the personal care provisions of the FMLA are barred by the
22 Eleventh Amendment.
- 23 8. Whether Plaintiff's FMLA claims are barred by the statute of limitations.
- 24 9. If the Court does not dismiss this case as to State of WI Defendants, State
25 of WI Defendants respectfully reserve the right to submit a supplemental
26 list of the principal substantive issues to be decided in the case.

27 **Meriter Defendants' Position**

- 28 1. Whether personal jurisdiction is appropriate over the Meriter Defendants.

2. Whether venue is proper.
3. Whether Plaintiff has stated a claim against the individual Meriter Defendants for discrimination.
4. Whether the Meriter Executive Board is a party capable of being sued.
5. Whether Plaintiff has complied with the applicable statutes of limitations.
6. Whether Plaintiff suffered any alleged discrimination or harassment, including whether the Meriter Defendants had legitimate non-discriminatory reasons for any acts or omissions, and whether the alleged harassment rose to the level of unlawful harassment under Title VII.
7. Whether Plaintiff had an employment relationship with the Meriter Defendants.
8. While denying any and all liability, whether Plaintiff suffered any damages, and if so, whether any alleged damages were mitigated.
9. If the Court does not dismiss this case as to the Meriter Defendants, they respectfully reserve the right to submit a supplemental list of the principal substantive issues to be decided in the case.

IV. JOINDER OF PARTIES AND AMENDMENT OF PLEADINGS

Plaintiff's Position

No additional plaintiffs at this time. Too early to tell. Probably when defendants answer and also during discovery. Additional defendants who are identified will be similarly implicated and liable as current defendants.

Plaintiff intends and reserves the right to amend the complaint.

Defendants' Position

Defendants reassert their objections to personal jurisdiction and venue, as raised in their respective Motions to Dismiss. Subject to, and without waiving these objections, Defendants provide the following response:

Plaintiff has indicated that she plans to amend the Complaint. Defendants have not taken a position on any such amendment, as no specifics/no draft amendment have

1 yet been provided. Defendants do not contemplate the appearance of additional
2 parties.

3 **V. INITIAL DISCLOSURES**

4 **Plaintiff's Position**

5 No changes should be made pursuant to Federal Rules of Civil Procedure 26(a)
6 or (f). Nor should discovery be conducted in phases or otherwise limited. Plaintiff sent
7 her initial disclosures to the defendants on December 26, 2023.

8 **Defendants' Position**

9 Defendants reassert their objections to personal jurisdiction and venue, as raised
10 in their respective Motions to Dismiss. Subject to, and without waiving these
11 objections, Defendants provide the following response:

12 Pursuant to Federal Rule of Civil Procedure 26(a)(c), Defendants objected
13 during the Rule 26(f) conference (and reassert here) that initial disclosures are not
14 appropriate in this action at this time, as the Court's rulings on Defendants' respective
15 Motions to Dismiss are still pending. Instead, Defendants respectfully request that (if
16 and only if the Court rules in favor of Plaintiff on Defendants' Motions to Dismiss)
17 initial disclosures by any parties remaining before this Court be due 14 days after the
18 Court has ruled on both the State of WI Defendants' and Meriter Defendants' Motions
19 to Dismiss.

20 Similarly, Defendants also request that discovery be stayed until the Court has
21 had an opportunity to rule on Defendants' respective Motions to Dismiss. *Wenger v.*
22 *Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002) (affirming district court's grant of
23 protective order staying discovery pending resolution of motion to dismiss), as
24 amended on denial of reh'g and reh'g en banc, (Apr. 17, 2002); *see also* Fed. R. Civ. P.
25 26(c)(1) ("The court may, for good cause, issue an order to protect a party or person
26 from ... undue burden or expense") In this case, there is good cause for a stay and
27 the interests of justice and judicial economy support Defendants' request. As
28 explained in Defendants' respective Motions to Dismiss, Defendants are all based in

1 Wisconsin, and it is Defendants' position that Plaintiff's counsel obviously or
 2 deliberately filed this case in the wrong court. *See Nichols v. G.D. Searle & Co.*, 991
 3 F.2d 1195, 1201 (4th Cir. 1993); *see also Stanifer v. Brannan*, 564 F.3d 455, 460 (6th
 4 Cir. 2009).

5 **VI. DISCOVERY TAKEN TO DATE**

6 Defendants reassert their objections to personal jurisdiction and venue, as raised
 7 in their respective Motions to Dismiss. Subject to, and without waiving these
 8 objections, Defendants join Plaintiff in the following statement:

9 No discovery has been propounded and no depositions have been taken.

10 **A. What changes should be made in the timing, form, or requirement** 11 **for disclosures under Rule 26(a), including a statement of when** 12 **initial disclosures were made or will be made:**

13 **Plaintiff's Position**

14 No changes should be made pursuant to Federal Rules of Civil Procedure 26(a)
 15 or (f). Nor should discovery be conducted in phases or otherwise limited. Plaintiff sent
 16 her initial disclosures to the defendants on December 26, 2023.

17 Plaintiff reserves the right to amend and supplement.

18 **Defendants' Position**

19 Defendants reassert their objections to personal jurisdiction and venue, as raised
 20 in their respective Motions to Dismiss. Subject to, and without waiving these
 21 objections, Defendants provide the following response:

22 Pursuant to Federal Rule of Civil Procedure 26(a)(c), Defendants objected
 23 during the Rule 26(f) conference (and reassert here) that initial disclosures are not
 24 appropriate in this action at this time, as the Court's rulings on Defendants' respective
 25 Motions to Dismiss are still pending. Instead, Defendants respectfully request that (if
 26 and only if the Court rules in favor of Plaintiff on Defendants' Motions to Dismiss)
 27 initial disclosures by any parties remaining before this Court be due 14 days after the
 28

1 Court has ruled on both the State of WI Defendants' and Meriter Defendants' Motions
2 to Dismiss.

3 Similarly, Defendants also request that discovery be stayed until the Court has
4 had an opportunity to rule on Defendants' respective Motions to Dismiss. *Wenger v.*
5 *Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002) (affirming district court's grant of
6 protective order staying discovery pending resolution of motion to dismiss), as
7 amended on denial of reh'g and reh'g en banc, (Apr. 17, 2002); *see also* Fed. R. Civ. P.
8 26(c)(1) ("The court may, for good cause, issue an order to protect a party or person
9 from ... undue burden or expense") In this case, there is good cause for a stay and
10 the interests of justice and judicial economy support Defendants' request. As
11 explained in Defendants' respective Motions to Dismiss, Defendants are all based in
12 Wisconsin, and it is Defendants' position that Plaintiff's counsel obviously or
13 deliberately filed this case in the wrong court. *See Nichols v. G.D. Searle & Co.*, 991
14 F.2d 1195, 1201 (4th Cir. 1993); *see also Stanifer v. Brannan*, 564 F.3d 455, 460 (6th
15 Cir. 2009).

16 **B. The subjects on which discovery may be needed and whether**
17 **discovery should be conducted in phases or be limited to or focused**
18 **on particular issues:**

19 **Plaintiff's Position**

20 **Subjects of Discovery**

- 21 a. Whether Meriter can be held responsible under the principles of agency, alter
22 ego.
- 23 b. The degree of UW's involvement and control over the actions of Meriter
24 defendants at the time the discriminatory actions took place.
- 25 c. Whether the defendants solicit or directly act as agents in soliciting or recruiting
26 California residents.
- 27 d. Whether UW and the Board of Regents have systematic, continuous activities
28 in California.

- e. Discrimination in False Patient Safety Reporting
- f. Retaliation for Reporting Racial Discrimination in Patient Safety
- g. Reporting:
- h. Discrimination for Advocating for Safe Care of a Minority Child who
- i. died.
- j. Retaliation, disparate treatment, hostile work environment, harassment,
- k. and Unjust Targeting
- l. Joint employment relationship between Meriter and UW
- m. The Requirement to undergo Vanderbilt testing after an approved leave
- n. University of Wisconsin-Madison's activities in California.
- o. All the allegations underlying all of plaintiff's claims and defendants' defenses.

In addition to jurisdictional discovery if it is granted, plaintiff plans to initiate the regular discovery process. But, these are stalled as there are pending motions to dismiss that have not being ruled on, plaintiff has not yet received an answer from the defendants.

Plaintiff states that discovery should not be limited and should not be conducted in phases or focused on any particular issues. Plaintiff has laid out a 10-year history and pattern of discrimination, retaliation, hostile and abusive work environment, harassment and disparagement of character in her complaint. Limiting the discovery or conducting a focused discovery will prejudice the plaintiff. Plaintiff reserves the right to amend and supplement.

Defendants' Position

Defendants reassert their objections to personal jurisdiction and venue, as raised in their respective Motions to Dismiss. Subject to, and without waiving these objections, Defendants provide the following response:

Plaintiff's claims and Defendants' defenses. Defendants respectfully request two sets of expert disclosure dates, one for liability experts and another for damages experts. Defendants further request that dates associated with liability experts be set

1 prior to the date motions for summary judgment are due and that damages expert-
2 associated deadlines be set later.

3 Defendants also incorporate by reference their request for a stay of discovery,
4 discussed in Section VI.A above.

5 **C. Any issues about disclosure, discovery, or preservation of**
6 **electronically stored information, including the form or forms in**
7 **which it should be produced:**

8 **Plaintiff's Position**

9 Plaintiff is not aware of any issues related to disclosure, discovery or the
10 preservation of electronically stored information ("ESI"). Plaintiff asserts that ESI
11 may be produced in pdf, Word, excel or similar format but must be preserved in its
12 native format and should be produced in native format if requested.

13 Plaintiff asserts that a protective order is required to protect plaintiff's and
14 patients' confidential records.

15 **Defendants' Position**

16 Defendants reassert their objections to personal jurisdiction and venue, as raised
17 in their respective Motions to Dismiss. Subject to, and without waiving these
18 objections, Defendants provide the following response:

19 The Parties agree a protective order is needed in this case, specifically to protect
20 confidential patient and/or student information.

21 **D. Any issues about claims of privilege or of protection as trial-**
22 **preparation materials, including—if the parties agree on a procedure**
23 **to assert these claims after production—whether to ask the court to**
24 **include their agreement in an order under Federal Rule of Evidence**
25 **502:**

26 **Plaintiff's Position**

27 Plaintiff is not aware of any issues but reserves the right to amend and
28 supplement.

1 **Defendants' Position**

2 Defendants reassert their objections to personal jurisdiction and venue, as raised
3 in their respective Motions to Dismiss. Subject to, and without waiving these
4 objections, Defendants provide the following response:

5 Defendants propose including a claw back provision for any unintentionally
6 produced privileged documents.

7 **E. What changes should be made in the limitations on discovery**
8 **imposed under these rules or by local rule, and what other**
9 **limitations should be imposed:**

10 **Plaintiff's Position**

11 Plaintiff asserts that there should be no limitations on discovery. The 30 days to
12 respond to discovery requests is more than adequate time. Plaintiff reserves the right
13 to amend and supplement.

14 **Defendants' Position**

15 Defendants reassert their objections to personal jurisdiction and venue, as raised
16 in their respective Motions to Dismiss. Subject to, and without waiving these
17 objections, Defendants provide the following response:

18 Defendants request 45 days (rather than the standard 30 days) to respond to
19 discovery requests. Defendants have no objection to this response timely applying to
20 all Parties. Defendants are comprised of many physicians and professors whose
21 professional commitments make the 30-day timeframe challenging. Defendants
22 respectfully request this slightly longer timeframe to avoid having to unnecessarily
23 request extensions to respond.

24 Defendants also incorporate by reference their request for a stay of discovery,
25 discussed in Section VI.A above.

26 ///

27 ///

28 ///

F. Any other orders that the court should issue under Rule 26(c) or under Rule 16(b) and (c):

Plaintiff's Position

Plaintiff asserts that a protective order is required to protect confidential records of the plaintiff and patients. Plaintiff reserves the right to supplement.

Defendants' Position

Defendants reassert their objections to personal jurisdiction and venue, as raised in their respective Motions to Dismiss. Subject to, and without waiving these objections, Defendants provide the following response:

The Parties agree a protective order is needed in this case, specifically to protect confidential patient and/or student information.

VII. RELATED CASE PROCEEDINGS

Defendants reassert their objections to personal jurisdiction and venue, as raised in their respective Motions to Dismiss. Subject to, and without waiving these objections, Defendants join Plaintiff in the following response:

None.

VIII. ALL RELIEF SOUGHT

Plaintiff's Position

Plaintiff seeks the following:

1. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and condemning Defendant's discriminatory practices;
2. For punitive damages for the Malicious & oppressive conduct, willful and conscious disregard of the Plaintiff's rights Intended to cause injury to the Plaintiff.
3. Front pay;
4. For injunctive relief barring Defendants' discriminatory employment policies and practices in the future;
5. Compensatory Damages for unjust denial of deserved Promotion to Associate Professor with tenure in spite of the approval of relevant assessment

departmental bodies, equitable relief for lifetime lost wages resulting therefrom;
- based on discovery, pain and suffering.

6. Expungement of the negative and false reports in the Plaintiff's medical file and employment records;

7. Compelling the Medical Executive Committee to reject the biased report and recommendations of the Ad Hoc Committee.

8. For costs of suit, and attorneys' fees

9. For post-judgment interest

10. Back pay

11. Emotional distress

Defendants' Position

Defendants reassert their objections to personal jurisdiction and venue, as raised in their respective Motions to Dismiss. Subject to, and without waiving these objections, Defendants provide the following response:

Defendants do not seek any affirmative relief. Defendants contend that Plaintiff's economic and non-economic damages are subject to proof by Plaintiff and also subject to reduction to the extent that Plaintiff could have avoided some or all of the harm she alleges by engaging in proper mitigation efforts. Defendants deny that Plaintiff has suffered damages as alleged, and also deny that, even if some liability were to be established, Plaintiff would be able to present evidence to support her demands.

IX. DISCOVERY PLAN

Plaintiff's Position

Plaintiff sent her initial disclosures to the defendants on December 26, 2023 and will conduct jurisdictional discovery if it is granted. With the exception of those, it is premature to seek to develop and initiate a regular discovery plan as the defendants have made it clear that they won't even engage in the initial disclosures. They are opposed to any discovery process until the motions to dismiss have been resolved.

1 Additionally, no answer has been received from them, plaintiff cannot anticipate the
 2 content of additional discovery or estimate how much time will be needed for
 3 discovery. Plaintiff reserves the right to amend and supplement.

4 **Defendants' Position**

5 Defendants reassert their objections to personal jurisdiction and venue, as raised
 6 in their respective Motions to Dismiss. Subject to, and without waiving these
 7 objections, Defendants provide the following response:

8 Pursuant to Federal Rule of Civil Procedure 26(a)(c), Defendants objected
 9 during the Rule 26(f) conference (and reassert here) that initial disclosures are not
 10 appropriate in this action at this time, as the Court's rulings on Defendants' respective
 11 Motions to Dismiss are still pending. Instead, Defendants respectfully request that (if
 12 and only if the Court rules in favor of Plaintiff on Defendants' Motions to Dismiss)
 13 initial disclosures by any parties remaining before this Court be due 14 days after the
 14 Court has ruled on both the State of WI Defendants' and Meriter Defendants' Motions
 15 to Dismiss. Defendants also incorporate by reference their request for a stay of
 16 discovery, discussed in Section VI.A above.

- 17 1. Non-Expert Discovery Cut-off – Before Last Date to File Motions.
- 18 2. Initial Liability Expert Disclosures – Before Last Date to File Motions.
- 19 3. Rebuttal Liability Expert Disclosures – Before Last Date to File Motions.
- 20 4. Liability Expert Discovery Cut-off – Before Last Date to File Motions.
- 21 5. Last Date to File Motions – August 2024 (assuming the Court rules on
 22 Defendants' Motions to Dismiss in December 2023 or January 2024), or at
 23 least eight (8) months after the Court rules on Defendants' Motions to
 24 Dismiss.
- 25 6. Last Date to Hear Motions – Late September 2024.
- 26 7. Initial Damages Expert Disclosures – Before Final Pre-Trial Conference
 27 Date.

28 ///

1 8. Rebuttal Damages Expert Disclosures – Before Final Pre-Trial Conference
2 Date.

3 9. Damages Expert Discovery Cut-off – Before Final Pre-Trial Conference
4 Date.

5 10. Final Pretrial Conference – February 2025 – Two weeks prior to the trial
6 date.

7 11. Trial Date – February 2025, or should the ruling on the Motions to Dismiss
8 be delayed beyond February 2024, at least 12 months after the Court rules
9 on Defendants' Motions to Dismiss.

10 **X. TRIAL ESTIMATE**

11 **Plaintiff's Position**

12 Plaintiff does not have enough information to provide an estimate of the length
13 of trial until discovery has been conducted. Plaintiff's preliminary estimate is for a 3-
14 week trial. Plaintiff reserves the right to amend and supplement.

15 **Defendants' Position**

16 Defendants reassert their objections to personal jurisdiction and venue, as raised
17 in their respective Motions to Dismiss. Subject to, and without waiving these
18 objections, Defendants provide the following response:

19 Defendants estimate that five (5) days will be needed for trial.

20 **XI. EFFORTS TO RESOLVE THE CASE**

21 **Plaintiff's Position**

22 Plaintiff prefers ADR Procedure No. 2 – use of the Court's mediation panel. No
23 efforts have been made to resolve the case by the parties.

24 **Defendants' Position**

25 Defendants reassert their objections to personal jurisdiction and venue, as raised
26 in their respective Motions to Dismiss. Subject to, and without waiving these
27 objections, Defendants provide the following response:

28 ///

1 Counsel has not discussed settlement, and no specific offers or demands have
2 been exchanged. Should the Court deny Defendants' respective Motions to Dismiss,
3 Defendants anticipate completing some initial discovery before initiating settlement
4 discussions.

5 Defendants prefer ADR Procedure No. 1 with the assigned magistrate judge to
6 this case.

7 **XII. COMPLEXITY**

8 Defendants reassert their objections to personal jurisdiction and venue, as raised
9 in their respective Motions to Dismiss. Subject to, and without waiving these
10 objections, Defendants join Plaintiff in the following response:

11 The Parties agree that the instant action is not a complex case.

12 **XIII. MOTIONS**

13 **Plaintiff's Position**

14 Plaintiff does not anticipate filing any motions that would decide key issues in
15 the case. Plaintiff reserves the right to amend and supplement.

16 **Defendants' Position**

17 Defendants reassert their objections to personal jurisdiction and venue, as raised
18 in their respective Motions to Dismiss. Subject to, and without waiving these
19 objections, Defendants provide the following response:

20 Defendants believe motions for summary judgment are likely in this case.
21 Given their pending Motions to Dismiss, Defendants respectfully propose August
22 2024 – but at least eight (8) months after the Court rules on Defendants' Motions to
23 Dismiss – as the cutoff date by which all dispositive or partially dispositive motions
24 shall be made.

25 ///

26 ///

27 ///

28 ///

1 **XIV. UNUSUAL LEGAL ISSUES**

2 Defendants reassert their objections to personal jurisdiction and venue, as raised
3 in their respective Motions to Dismiss. Subject to, and without waiving these
4 objections, Defendants join Plaintiff in the following response:

5 The Parties to not anticipate any unusual legal issues at this time.

6 **XV. SEVERANCE, BIFURCATION, OR OTHER ORDERING PROOF**

7 **Plaintiff's Position**

8 Plaintiff asserts that there should be no severance or bifurcation. Plaintiff
9 reserves the right to amend and supplement.

10 **Defendants' Position**

11 Defendants reassert their objections to personal jurisdiction and venue, as raised
12 in their respective Motions to Dismiss. Subject to, and without waiving these
13 objections, Defendants provide the following response:

14 Defendants will seek to bifurcate liability and damages.

15 **XVI. Confirmation of Lead Trial Counsel as ECF Users:**

16 Defendants reassert their objections to personal jurisdiction and venue, as raised
17 in their respective Motions to Dismiss. Subject to, and without waiving these
18 objections, Defendants join Plaintiff is providing the following response.

19 Trial Counsel (C. Valerie Ibe for Plaintiff, Robin A. Wofford for State of WI
20 Defendants, and Brian Hough for Meriter Defendants) confirm that they are each
21 registered as ECF Users. C. Valerie Ibe's email address of record is:
22 valerie@cvalerieibe-law.com. Robin A. Wofford's email address of record is:
23 rwofford@wilsonturnerkosmo.com. Brian Hough's email address of record is
24 bhough@axley.com.

25 ///

26 ///

27 ///

28 ///

1 Dated: December 26, 2023

LAW OFFICES OF C. VALERIE IBE

2
3 By: /s/ Chinyere Valerie Ibe
4 CHINYERE VALERIE IBE
5 Attorney for Plaintiff
6 OLACHI MEZU-NDUBUISI

7 Dated: December 26, 2023

AXLEY BRYNELSON. LLP

8
9 By: /s/ Brian Hough
10 BRIAN HOUGH
11 Attorneys for Specially Appearing
12 Defendants UNITYPOINT HEALTH-
13 MERITER HOSPITAL, AKA MERITER
14 HOSPITAL, INC., PAM WETZEL, SUE
15 ERICKSON; MERITER EXECUTIVE
16 BOARD COMMITTEE; AMANDA
17 LINDSAY, KARL NIBBELINK,
18 ELIZABETH PRITTS, SHERRY
19 HENSELER, AND NINA MENDA (IN
20 HER CAPACITY AS A PERSON
21 ASSOCIATED WITH MERITER
22 HOSPITAL, INC.)

23 Dated: December 26, 2023

WILSON TURNER KOSMO LLP

24 By: /s/ Karyn R. Moore
25 ROBIN A. WOFFORD
26 MARY P. SNYDER
27 KARYN R. MOORE
28 Attorneys for Specially Appearing
Defendants UNIVERSITY OF
WISCONSIN-MADISON (erroneously
sued), BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM,
ROBERT GOLDEN, ELLEN WALD,
RYAN MCADAMS AND NINA MENDA
(IN HER CAPACITY AS A UNIVERSITY
OF WISCONSIN-MADISON
EMPLOYEE)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories concur in the filing's content.

By: /s/ Karyn R. Moore
KARYN R. MOORE